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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,841	08/16/2001	Paul Nadj	SIA-P033	4552
45640 7590 12/28/2007 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085			EXAMINER FILIPCZYK, MARCIN R	
			ART UNIT 2163	PAPER NUMBER
			MAIL DATE 12/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/931,841

Applicant(s)

NADJ ET AL.

Examiner

Marc R. Filipczyk

Art Unit

2163

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-10 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-10, 17 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

***Response to Amendment***

This action is responsive to Applicant's amendment filed on October 9, 2007.

To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).

***Claim Rejections - 35 USC § 112***

Claim 22 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of "program instructions for processing the selected one of the events at the processing resource prior to remaining events" was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 23-27 they depend from claim 22 and are therefore rejected on the same basis.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 22-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth whether the invention accomplishes a practical application and whether it generates a useful, concrete and tangible result.

The guidelines explain that a practical application of a 35 U.S.C. 101 judicial exception is claimed if the claimed invention physically transforms an article or physical object to a different state or thing, or if the claimed invention otherwise produces a useful, concrete, and tangible result.

In the present case, independent claim 22 does not involve transformation of article or physical object to a different state or thing, they merely recite associating queues with a data structure. Further, independent claim 22 does not produce a useful, concrete, and tangible result generated by a medium having program instructions because a computer readable medium is not defined in the specification comprising processing instructions.

Claim 22 taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is descriptive material per se, do not comprise a practical application as explained above hence is nonstatutory.

Since the claimed invention, as a whole, does not comprise a practical application as explained above, claims 23-27 which depend from claim 22 respectively, are deemed to be directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 5-10 and 22-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Cochran et al (U.S. Patent No. 6,701,324).

Regarding claims 5 and 22, Cochran discloses a method/program for scheduling events in a computer processing system: (abstract)

identifying queues, each queue associated with a corresponding priority; (fig. 4, items 402, 404 and 406)

defining a data structure with a root level having a group node, the group node having nodes stored contiguously in memory and pointer; (fig. 1 A, item 110, 108n, 106 and 104, col. 5, lines 18-22 and col. 8, lines 41-46)

associate queues with respective nodes of the data structure; (col. 5, lines 22-28)

assign a value representing the corresponding priority to the respective nodes; (col. 5, line 22, *scheduling*)

determine priority between nodes based on respective values representing the corresponding priority to the respective nodes; (fig. 3, 108n, 110, 302 and col. 7, lines 10-19 and lines 53-59)

select one of the events corresponding to a node having a highest priority for transmission to a processing resource (fig. 4, items 424 and 426 and col. 8, lines 56-65); and

processing the selected one of the events at the processing resource prior to remaining events (fig. 4, items 424 and 426 and col. 8, lines 56-65).

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Regarding claims 6-10 and 23-27, all of the features have been noted in the rejection above, in addition see rescheduling (fig. 4, item 424 and related text), routing manager (fig. 1A, item 110 and related text) and RDBMS (fig. 1A, item 114 and related text).

### ***Response to Arguments***

Applicant's arguments filed on October 9, 2007 have been fully considered but they are not persuasive. The arguments and responses are listed below.

Applicant argues that Applicant's invention falls within the technological arts.

Examiner disagrees. The claimed invention must have practical application under a 35 U.S.C. 101 requirement. The amended claim 22 comprising "program instructions for processing the selected one of the events at the processing resource prior to remaining events" is rejected under new matter as not supported by the Applicant's disclosure and renders the claims non-statutory.

Applicant argues on page 8 that prior art does not teach "nodes sharing a pointer".

Examiner disagrees. Referring to fig. 1A, Gateways and collectors (106 and 108) are interpreted as pointers shared by nodes 104. See col. 3 lines 46-67 and cited text in the rejection for more information.

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Applicant argues that the feature of nodes being stored contiguously in memory is not shown by Cochran.

Examiner disagrees. Cochran teaches storing nodes in contiguous memory and refers to it as persistent depot, illustrated in fig. 1A and col. 3, lines 46-67. Applicants did not provide any support or arguments for how the claimed contiguous memory is novel or different over the prior art's.

Applicant argues that Cochran does not teach determining if a node is empty after selection, retaining a value enabling rescheduling of the node after selection and rotating a pointer among the nodes.

Examiner disagrees. Cochran teaches "determining if a node is empty after selection" (fig. 1A, *lowest priority nodes*, col. 3, lines 54-65), teaches "retaining a value enabling rescheduling of the node after selection" (fig. 4, item 424, col. 8, lines 40-46, *stores and retrieves collection data from depot*), and "rotating a pointer among the nodes" (fig. 1A, nodes 104 and gateway 106, *availability of resource*, wherein based on availability the available node points to the gateway 106 or collector 108 to forward data for collection, col. 6, lines 47-58).

With respect to all the pending claims 5-10 and 22-27, Examiner respectfully traverses Applicant's assertion based on the discussion and rejections cited above.

### ***Conclusion***

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R. Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

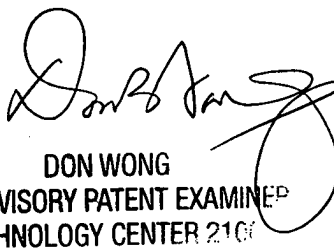


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MF

December 17, 2007



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